

REMARKS

Favorable consideration and allowance are requested for claims 1-6, 8 and 9 in view of the following remarks.

Status of the Application

Claims 1-6, 8 and 9 are pending in this application. Claims 1, 2, and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,958,974 to Prehofer (the “Prehofer patent”) in view of Japanese Patent Publication No. 2003-249945 to Yamamoto *et al.* (the “Yamamoto publication”). Claims 3 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Prehofer patent in view of the Yamamoto publication and further in view of U.S. Patent No. 7,245,610 to Kalmanek *et al.* (the “Kalmanek patent”). Claims 5 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Prehofer patent in view of the Yamamoto publication, further in view of the Kalmanek patent, and further in view of U.S. Patent Publication No. 2005/0147052 to Wu (the “Wu publication”). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Prehofer patent in view of the Yamamoto publication and further in view of Wu publication.

Rejections under 35 U.S.C. § 103(a)

According to the Office Action, the combination of the Prehofer patent and the Yamamoto publication renders the subject matter of claims 1, 2, and 4 obvious. In response, Applicants respectfully assert that neither of these references is directed to a “call [that] is to be established,” as required by claim 1.

Instead, as described below, both the Prehofer patent and the Yamamoto publication are concerned with network traffic that is already under way.

In particular, the Prehofer patent is directed to stability in the face of changing network conditions: “As a result, particularly at a high utilization level, the dynamic matching of the quality class on the basis of the network conditions prevents the quality grade from dropping *during data transmission*, and hence keeps the quality grade stable.” Prehofer patent at col. 3, lines 39-43 (emphasis added).

Further, Applicants respectfully submit that the Prehofer patent does not teach the reduction of priority if the transmission quality of data packets is too low, as suggested at page 2 of the outstanding Office Action. Rather,

reassignment to a higher priority class is repeated until the demanded transmission bandwidth is reached. Under the circumstance in which the highest priority class in the quality class has already been assigned and only a transmission bandwidth of, by way of example, 85 kbit/s could be achieved, it is appropriate to assign the data packets associated with the video transmission to the next highest quality class, e.g. A.

Prehofer patent at col. 6, lines 24-32 (emphases added). This reassignment scheme in the Prehofer patent is not directed to determining whether a call should be dropped – as set forth in claim 1 – but rather at maintaining the quality of the call. Therefore, increasing the priority class in the manner disclosed in the Prehofer patent would not lead to the dropping of a call, and, thus, this disclosure teaches away from the subject matter of claim 1.

With respect to the Yamamoto publication, Applications respectfully submit that it is directed to avoiding billing a subscriber when voice quality has

deteriorated: “the provider guarantees a certain minimum voice quality for each call, and if call quality falls below standard, the provider stops billing or forces disconnection, from the network side, of the call in question.” Yamamoto publication (English translation) at ¶ [0018]. In other words, the Yamamoto publication is directed to determining whether the quality of an existing call falls below some standard, not with whether a call should even be set up.

The paragraphs of the Yamamoto publication cited in the outstanding Office Action make clear the distinction between this reference and the subject matter of claim 1:

a call processing server that has been notified that a threshold value has been exceeded reacts by either *making the call* (or the user) *using the RTP session in question* non-billable or forcing disconnection, so that a time-based charge is not generated when voice quality has deteriorated[, where t]he threshold value . . . is determined empirically by making an objective measurement of voice quality

Yamamoto publication (English translation) at ¶¶ [0011]-[0012] (emphasis added).

As neither the Prehofer patent nor the Yamamoto publication, alone or in combination, disclose or suggest making any determinations or taking any steps “for a call [that] is to be established,” claim 1 is patentable over these references. As each of claims 2 and 4 has claim 1 as its base claim, these claims are patentable as well.

With respect to claims 3 and 6, Applicants respectfully submit that the Kalmanek patent fails to disclose the subject matter of claim 1 missing from the

Prehofer patent and Yamamoto publication, as discussed above. Therefore, claims 3 and 6 are also patentable.

With respect to claims 5, 8, and 9, Applicants respectfully submit that the Wu publication also fails to disclose the subject matter of claim 1 missing from the Prehofer patent and Yamamoto publication, as discussed above. Therefore, claims 5, 8, and 9 are also patentable.

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If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 038665.56185US).

Respectfully submitted,

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/Michael H. Jacobs/
Michael H. Jacobs
Registration No. 41,870

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
MHJ:msy